IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

OP.No. 887 of 2002(E)

PETITIONER:
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1. SMT.MINIMOL LUKOSE,W/O.LATE BENNY LUKOSE AEGE 35, EDATTU HOUSE, KURUMULLOORKARA KANAKKARY VILLAGE,MEENACHIL TALUK, KOTTAYAM DIST.REP.BY HER LAWFUL POWER OF ATTORNEY-A.M.LUKOSE,S/O.LATE MANI AGED 72. RESIDING AT DO. DO. NOW RESIDING AT-1305 CHOCTAN-DR.MOSQUITE TX 75149 DALLAS U.S.A.

2. CHRIS,S/O.LATE BANNY LUKOSE(MINOR)AGED 6 EDATTU HOUSE KURUMULLOORKARA,KANAKKARY VILLATE MEENACHIL TALUK,KOTTAYAM DIST.NOW RESIDING AT-1305 CGICTAB-DR.MESQUITE TX 75149 DALLAS USA.REP.BY HIS MOTHER SMT.MINIMOL LUKOSE-(THE 1ST PETITIONER) W/O.LATE.BENNY LUKOSE.

3. CHRISTI,S/O.LATE BENNY LUKOSE(MINOR)AGED 5 YEARS,EDATTU HOUSE,KURUMULLOORKARA,KANAKKARY VILLAGE MEENACHIL TALUK,KOTTAYAM DISTRICT. NOW REISDING AT 1305 CHOCTAW - DR.MESQUITE TX 75149 DALLAS U.S.A. REP.BY HER MOTHER SMT.MINIMOL LUKOSE (THE 1ST PETITIONER) W/O.LATE.BENNY LUKOSE.

BY ADV. SRI.P.K.MURALEEDHARAN
SRI.SUNU P.JOHN
SRI.C.DEVANAND

RESPONDENTS:
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1. THE LIFE INSURANCE CORPORATION OF INDIA REPRSENTEDJ BY THE DIVISIONAL MANAGER DIVISIONAL OFFICE, KOTTAYAM DIVISION, KOTTAYAM.

2. THE BRANCH MANAGTER, THE LIFE INSURANCE CORPORATION OF INDIA PALA BRANCH, PALA,KOTTAYAM.

BY ADV. SRI. S.EASWARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN C.M.P. NO.1384/2002 & I.A. NO.6023/2002 IN O.P. NO.887/2002

DISMISSED:

19.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONERS' EXHIBITS:

P1: TRUE COPY OF THE POWER OF ATTORNEY DT.18.11.99.

P2: TRUE COPY OF ACKNOWLEDGEMENT RECEIPT DT.7.6.99.

P3: TRUE COPY OF LETTER DT.6.7.99.

P4: TRUE COPY OF CLAIM INTIMATION DT.30.7.99.

P4(a): TRUE COPY OF DEATH CERTIFICATE DT.9.7.99.

P5: TRUE COPY OF LETTER DT.14.8.99.

P6: TRUE COPY OF LEGAL NOTICE DT.4.10.99.

P7: TRUE COPY OF REPLY NOTICE DT.30.10.99.

P8: TRUE COPY OF PLAINT IN O.S. NO.433/99 DT.16.12.99.

P9: TRUE COPY OF WRITTEN STATEMENT IN O.S. 433/99 DT.18.8.00.

RESPONDENT'S EXHIBITS:

R2(a): COPY OF NOTICE DT.8.6.2001 ISSUED BY MUNSIFF COURT, PALA.

R2(b): COPY OF PETITION, I.A. NO.1582/2001 IN O.S. NO.433/1999 FILED BY PETITIONER.

TRUE COPY

P.S. TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.887 of 2002

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Dated this the 19th day of March, 2007.

JUDGMENT

The petitioners are challenging Ext.P5 order whereunder second respondent has declined petitioners' insurance claim for the death of the husband of the first petitioner and father of petitioners 2 and 3.

2. I have heard counsel for the petitioners and Standing Counsel appearing for L.I.C. The petitioner's husband Mr.Benny Lukose gave a proposal for taking a double accident benefit insurance policy for Rs.5 lakhs on 6.6.1999. Along with the proposal initial premium of 660 Dollars was paid through a cheque drawn on an American Bank. However, before collecting the cheque and crediting the same to the premium account, the insured died on 16.6.1999. The cheque got realised only on 30.6.1999 and since policy had not been issued, LIC vide impugned proceeding declined to pay the policy amount to the legal heirs of the deceased. Even though civil suit was filed before the Munsiff Court, Palai, the same was rejected as it was beyond the pecuniary jurisdiction of the Munsiff Court. Therefore, the O.P. is filed challenging the order declining benefit under the policy. Counsel for the petitioner has relied on Ext.P2 which according to him is

unconditional acceptance of the premium amount and commencement of the policy. He has relied on Division Bench decision of this court in L.I.C. OF INDIA V. KAMALAMMA (1986 KLT 342) and contended that once premium is accepted unconditionally, the beneficiary is entitled to benefit of policy even if policy document was not issued. Counsel for the LIC on the other hand referred to the decisions of the Supreme Court in LIC OF INDIA V. R.VASIREDDY (AIR 1984 SC 1014) and in LIC OF INDIA V. PRASANNA DEVARAJ (1994(2) KLT 541) and an unreported decision of this court in O.P. No.31421/2002 dated 8.6.2005 and contended that since insured died pending acceptance of proposal for the policy, the contract of insurance had not come into force as on date of death of the insured and therefore, benefits under the policy are not available to the legal heirs. LIC's Manual for Finance and Accounts Department is produced by counsel for LIC where acceptance of Foreign Currency, Cheques/Drafts etc., are dealt with in clauses 1 and 2 as follows:

> "1. Cheques/Drafts etc. which are drawn in Foreign Currency cannot be accepted at the cash counter, since no receipt can be issued till the proceeds of the Foreign Currency instruments have been duly realised in Indian rupees. However, an acknowledgement may be given by Inward Department, if such an instrument is received by hand delivery.
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> 2. When the Demand Drafts/Cheques are received by

> the Cash Section in Foreign Currency, through the Remittances Received Register, accounting entries shall not be passed in the books of accounts. Entries shall be passed in the Cash Book only after proceeds are realised in Indian rupees and credited to our Bank Account (No.I or III, as the case may be) by the bankers, i.e. on receipt of necessary credit advice from the Bank."

From the above it is clear that premium received through Foreign Cheque can be credited in the account of the person only in Indian rupee, that too, only after realisation of benefit from the Foreign Bank. In view of this condition, it cannot be said that premium was paid on the date the Foreign Cheque was delivered. There is no provision to accept premium in Foreign Exchange because the premium amount payable in this case was Rs.27,662/-. However, counsel for the petitioners raised a contention that the rupee equivalent of the cheque collected was Rs.28,276/- and the difference according to the petitioners, is attributable to the extra charges recovered by LIC for advancing of policy date from the date of proposal. However, counsel for the LIC denied the same and contended that Foreign Cheques are received on recovery basis at prevailing exchange rate which is fluctuating and on collection and after adjustment of premium amount in rupee terms excess, if any, will be kept as a deposit in the insured's account for being appropriated towards the next premium amount. In any case there is nothing to indicate that the proposal was to accept the policy with any

back date. In other words, unless the proposal is accepted by the LIC which happens in terms of the Manual of Accounts only on crediting the first premium amount in Rupee, it cannot be said that the contract of insurance has come into force and as held by the Supreme Court in the above two decisions. However, it is seen that in the first decision of the Supreme Court referred to above, inspite of holding that there is no policy, the court directed payment of 50% of the policy amount. In this case also it is seen that LIC prima facie did not reject the claim when they issued Ext.P5 dated 14.8.1999 because the proposal was to consider the claim. Further, it is stated in Ext.P5 that the Divisional Office of the LIC was considering payment on ex-gratia basis. This would go to indicate that vide discretion is left with the LIC to make payment even in cases where there is no technical acceptance of proposal and issuance of policy. Besides all these, the recovery of a Foreign Cheque to a large extent depends on the method adopted by the beneficiary to recover the amount. Obviously the insured had the credit balance in his foreign account because the cheque got promptly paid as and when presented by LIC's Bank. More than three weeks time was taken to recover the amount from the foreign bank probably because the LIC's Bank did not take any quick steps for recovery. Further, LIC has no case that the proposal was defective or unacceptable for any

other reason. In other words, but for the immediate death of the insured, there would have been no problem about the policy. The Senior Divisional Manager who declined ex-gratia payment also has not stated any reason to do it. I feel in order to maintain goodwill which is required for the LIC, they have to be considerate on situations like this. Therefore, I feel this is a fit case to award ex-gratia payment to the petitioners. In the circumstances and in view of the provision for grant of ex-gratia payment for death even in cases where policies are not issued, I feel petitioners are entitled to 50% of the policy amount. In the circumstances, O.P. is partly allowed directing the LIC to make an ex-gratia payment of rupees two lakhs fifty thousand to the petitioners within a period of one month from the date of production of copy of this judgment.

C.N.RAMACHANDRAN NAIR
Judge

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